



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

OCT 20 2005

VIA FACSIMILE & FIRST CLASS MAIL

James E. Anklam, Esq.
James D. Wareham, Esq.
Paul, Hastings, Janofsky & Walker LLP
1299 Pennsylvania Avenue
10th Floor
Washington, DC 20004-2400

Re: MUR 5628
AMEC Construction Management, Inc.

Dear Messrs. Anklam and Wareham:

On September 29, 2005, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 441b(a), 441c, and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of your client and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Goodin".

Mark A. Goodin
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

AMEC Construction Management, Inc., *et al.*

MUR 5628

2005 SEP 19 A 10: 06

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission filed with the Federal Election Commission ("the Commission") by AMEC Construction Management, Inc. ("ACMI"). Based on the facts disclosed by ACMI and other available information, the Commission found reason to believe that ACMI knowingly and willfully violated 2 U.S.C. §§ 441b, 441c, and 441f. The Commission also found reason to believe that John Babieracki, Mitchell Becker, John Cavanagh and Norman Fornella knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, and that Lawrence Capelli and Joseph Mandile knowingly and willfully violated 2 U.S.C. § 441f. (ACMI and these individuals are referred to collectively as "Respondents.") "Reason to believe" is a preliminary finding and a statutory prerequisite to an investigation as to whether there is probable cause to believe a violation occurred. In an effort to resolve this matter expeditiously, the Commission has forgone an investigation, and accordingly, has neither considered nor made a finding as to whether there is probable cause to believe that the violations in this matter were committed knowingly and willfully. Respondents have made no admissions to knowing and willful violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

This Agreement constitutes a global resolution as to all Respondents of the entire proceedings for MUR 5628 and, in accordance with its terms, this Agreement terminates all proceedings as to the Respondents relating to the events described herein.

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NOW, THEREFORE, the Commission and ACMI, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, and in order to resolve all issues relating to the Respondents, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. ACMI enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. ACMI is a corporation organized under the laws of the state of Delaware and with its principal place of business in New York. ACMI, formerly known as Morse Diesel International, Inc. ("Morse Diesel International"), provides construction management services for large construction projects within the United States. In 1990, ACMI's ultimate parent company (AMEC plc) contributed 50% and Morse/Diesel, Inc. contributed 50% to the creation of a new company named Morse Diesel International. AMEC plc acquired the remaining interest in Morse Diesel International in 1995, and the company operated under that name until changing it to ACMI in 2001. The management of Morse Diesel International remained in place throughout this period until approximately 2000.

2. John Babieracki served in various upper-level positions at ACMI, including Senior Vice President, until he was demoted in October 2003. He later left ACMI's employ.

3. Mitchell Becker served as Chief Counsel for ACMI until 1995, when he left the company. He returned to ACMI in March 1998 as a senior executive (but not counsel), and then served as CEO beginning in 2001. ACMI terminated his employment in October 2003.

4. John Cavanagh served in various senior executive positions at ACMI, including Chief Operating Officer, during the 1990's. ACMI terminated his employment in October 2003.

5. Norman Fornella served as Chief Financial Officer for ACMI until his departure in October 2000.

6. Lawrence Capelli served in various mid- and upper-level positions at ACMI until he was demoted in October 2003. He later left ACMI's employ.

7. Joseph Mandile, a current ACMI employee, served in various mid- and upper-level positions in the accounting department at ACMI until he was demoted in October 2003.

8. The Act prohibits corporations from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). The Act also prohibits any officer or director of any corporation from consenting to any contribution by that corporation. 2 U.S.C. § 441b(a). In addition, the Act prohibits a federal contractor from making any contribution to any political party, committee, or candidate for public office. 2 U.S.C. § 441c(a). The Act further prohibits any person from making a contribution in the name of another person, or knowingly permitting his name to be used to effect such a contribution. 2 U.S.C. § 441f. Commission regulations prohibit persons from knowingly assisting in making contributions in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

9. In October 2003, ACMI and ACMI's ultimate parent company disclosed to the Commission the existence of practices by which ACMI reimbursed certain employees for making certain contributions to federal election campaigns. In total, six employees from ACMI's New

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York City headquarters office were involved in ACMI's political contribution reimbursement activities, all of whom were officers, or at least held mid- or upper-level positions at the company. These employees included (1) John Babieracki; (2) Mitchell Becker; (3) John Cavanagh; (4) Norman Fornella; (5) Lawrence Capelli; and (6) Joseph Mandile. Furthermore, all of these employees, except for Mr. Mandile, admitted receiving at least one reimbursement for federal election contributions through ACMI's payroll bonus practices. Mr. Mandile made no contributions and received no reimbursements. ACMI contends that its parent company did not know of the reimbursement activities described in this Agreement prior to commencing in 2003 an investigation of the reimbursement activities described herein.

10. In its October 2003 and subsequent disclosures to the Commission, ACMI provided information regarding which employees received corporate reimbursements for contributions made to federal political committees for the period from October 15, 1998 to December 22, 1999. The total amount that ACMI reimbursed during this period was \$16,935. Of this total amount, Mr. Becker accepted \$2,000; Mr. Cavanagh accepted \$4,935; Mr. Fornella accepted \$6,000; and Mr. Capelli accepted \$4,000.

11. Although ACMI employees made contributions to federal political committees prior to October 15, 1998, ACMI did not attempt to reach a definitive conclusion concerning reimbursements for contributions prior to that date. ACMI admits that some reimbursements for some employee contributions occurred prior to October 15, 1998. As an example, for the period from January 1995 to October 15, 1998, ACMI employees made over \$15,000 in contributions to federal political committees, some of which was reimbursed by ACMI.

12. Beginning as early as the late 1980's, management at Morse/Diesel, Inc. reimbursed some employees' contributions to federal political committees through its expense account

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system. That practice continued after the creation of Morse Diesel International in 1990. It is unclear whether, under this system, employees openly described on their reimbursement request forms that the expenses at issue were contributions to federal political committees. Later, ACMI reimbursed some of these types of contributions by paying special bonuses through its payroll system.

13. Mr. Fornella asserted that ACMI switched to the special bonus method of reimbursing contributions based on advice that he received from an outside auditing firm (KPMG) that such reimbursements could occur. ACMI's then-COO (John Cavanagh) and/or its then-CFO (Norman Fornella) determined which contributions to make and which employees would make (and be reimbursed for) them. Mr. Fornella then instructed the selected employee to make a particular political contribution and instructed an accounting department employee (Joseph Mandile) to pay a "grossed up" bonus to that employee. Mr. Mandile calculated the "grossed up" amount of the bonus. As a result, the employee's net bonus, after taxes, equaled the amount of the contribution at issue. On some occasions, a spouse of an employee made contributions for which the employee received reimbursement from ACMI. Also, the company paid a special bonus to reimburse a then-Senior Vice President (John Babieracki) after he had used personal funds to reimburse subordinates for political contributions.

14. John Babieracki, Mitchell Becker, John Cavanagh, Norman Fornella and Lawrence Capelli admitted to receiving reimbursements from AMEC for contributions to federal campaigns. Each of the individuals identified in this Agreement maintains that he did not understand that any of the reimbursement practices used by ACMI violated federal law. Each individual maintains that the five-year statute of limitations period (28 U.S.C. § 2462) has expired concerning the matters described in this Agreement

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15. ACMI represents that no written records exist that link a special bonus to a particular contribution. ACMI payroll records indicate when special bonuses were paid, but do not explain the basis for their payment. Accordingly, ACMI conducted an internal investigation by ~~reviewing payroll records, examining political contribution records available on public websites,~~ and interviewing current or former employees potentially involved in the reimbursement activities. In making its self-disclosure, ACMI included in its list of reimbursed contributions any contribution for which ACMI had any information to suggest that the contribution was reimbursed. ACMI contends that during its investigation, Mr. Mandile provided significant assistance to the investigating team concerning the methodology used in the reimbursement practices, and all six individuals identified in this Agreement cooperated in this investigation. ACMI contends that there is no evidence that any ACMI employee (other than those identified in this Agreement) knew about the bonus program during the October 1998 to January 2000 period, and that there is no evidence that any official of any campaign or committee that received the contributions knew that the contributions were reimbursed.

16. John Babieracki, Mitchell Becker, John Cavanagh and Norman Fornella consented to contributions from ACMI's general treasury fund in connection with elections of candidates for federal office. John Babieracki, Mitchell Becker, John Cavanagh and Norman Fornella and Lawrence Capelli permitted their names to be used in the making of contributions in the name of another. Joseph Mandile assisted in the making of contributions in the name of other persons.

17. After conducting an internal investigation, ACMI took certain remedial action, ~~including firing or demoting those employees whom it found to have been involved in those~~ practices. ACMI also promulgated (and submitted to the Commission) a company policy

concerning political contributions and implemented training to ensure that no future reimbursement activity occurs

18 ACMI reimbursed political contributions through various methods from the late 1980's to early 2000. ACMI represents that it ceased making reimbursements to its employees for contributions to federal political committees in January 2000. If the Commission should obtain information regarding contributions reimbursed by ACMI after January 2000, this Agreement shall not bar further Commission action.

19. ACMI further agrees that the Commission's acceptance of this Agreement is conditioned on the truthfulness and completeness of information ACMI provided to the Commission. ACMI agrees that if it falsely stated or failed to disclose material information concerning its reimbursement of contributions after October 15, 1998, such false statement or omission shall constitute a violation by ACMI of this Agreement and grounds for the Commission to obtain relief against ACMI in a civil action pursuant to 2 U.S.C. § 437g(a)(5)(D). In such a civil action, if the court finds that ACMI falsely stated or failed to disclose material information concerning its reimbursement of contributions after October 15, 1998, ACMI agrees that it will consent to the court's entry of a civil penalty equal to 200% of any such reimbursements.

20. In order to avoid the expense of litigation, ACMI has freely agreed to admit to the violations it voluntarily disclosed to the Commission without waiving its statute of limitations defense as to those violations.

21. If at any time within the next five years, ACMI or any of its employees or agents learns of facts indicating that additional federal political contributions may have been reimbursed using ACMI funds, ACMI will immediately report these facts to the Commission. If ACMI fails

to report such information and the Commission learns at any time after the execution of this Agreement that there were additional federal political contributions reimbursed by ACMI, the Commission will consider this Agreement to have been violated by ACMI and any such contributions will be subject to further enforcement action by the Commission against ACMI and any Respondent involved in the additional contribution. ACMI agrees to waive any applicable statute of limitations for any such action brought by the Commission.

V. ACMI made contributions from its general treasury funds in connection with elections of candidates for federal office, in violation of 2 U.S.C. § 441b. ACMI will cease and desist from violating 2 U.S.C. § 441b.

VI. ACMI made contributions in violation of 2 U.S.C. § 441c. ACMI will cease and desist from violating 2 U.S.C. § 441c. ACMI contends that it did not make any contributions with the intent of receiving, in return, any governmental benefit, and the Commission has not conducted an investigation and has no information that ACMI did so.

VII. ACMI made contributions in the name of other persons, in violation of 2 U.S.C. § 441f. ACMI will cease and desist from violating 2 U.S.C. § 441f.

VIII. ACMI will deliver a copy of this Agreement to all of its officers and directors no more than 30 days from the date this Agreement becomes effective. ACMI must secure a signed and dated statement acknowledging receipt of a copy of this Agreement, within thirty (30) days of delivery, from its officers and directors.

IX. Based solely on the conduct described within this Agreement, ACMI will pay a civil penalty to the Federal Election Commission in the amount of Eighty-five Thousand Dollars (\$85,000), pursuant to 2 U.S.C. § 437g(a)(5). In light of ACMI's payment of this amount, the Commission has decided to forego seeking civil penalties that it otherwise may have sought from

the individual Respondents. ACMI waives its right to a refund of all political contributions from the recipient committees.

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XI. This Agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire Agreement.

XII. ACMI shall have no more than thirty (30) days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written

agreement shall be enforceable. In accordance with its terms, this Agreement terminates all proceedings as to the Respondents relating to the events described herein.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

10/14/05
Date

FOR AMEC CONSTRUCTION MANAGEMENT, INC.:

David Leonard
David Leonard
President
AMEC Construction Management, Inc.

September 9, 2005
Date

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